

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2004-011374

01/09/2012

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT

C. Vigil

Deputy

IN RE THE MATTER OF
CORI LYNN CRITZER

CORI LYNN CRITZER
2649 S 89TH DR
TOLLESON AZ 85353

AND

BRYAN THOMAS STOVALL

BRYAN THOMAS STOVALL
4515 W RUSHMORE DR
ANTHEM AZ 85087

MINUTE ENTRY

Both parties have filed what amount to requests for a new trial in this matter. As explained below, neither request is legally sufficient.¹

Respondent Bryan Stovall titled his submission an “Urgent Motion for Clarification.” The Court has already addressed the motion’s initial inquiry regarding the characterization of

¹ The Court recognizes that both parties filed their post-hearing requests as self-represented parties without the assistance of attorneys. The applicable law, nevertheless, does not permit the Court to take that into consideration. “Parties who choose to represent themselves ‘are entitled to no more consideration than if they had been represented by counsel’ and are held to the same standards as attorneys with respect to ‘familiarity with required procedures and . . . notice of statutes and local rules.’” *In re Marriage of Williams*, 219 Ariz. 546, 549, ¶13, 200 P.3d 1043, 1046 (App. 2008) (quoting *Smith v. Rabb*, 95 Ariz. 49, 53, 386 P.2d 649, 652 (1963)). “A party’s ignorance of the law is not an excuse for failing to comply with it.” *Williams*, 219 Ariz. at 549, ¶13, 200 P.3d at 1046.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2004-011374

01/09/2012

parenting time as an “increase.” [Minute Entry (11/29/11)] With respect to its remaining issues, the motion seemingly misapprehends that the Court’s ruling reflects not just the evidence presented at the November 8 hearing, but the manner in which it was presented. The many questions posed by the motion are, at least to a fair extent, a reflection of the fact that evidence that Respondent may have wanted to present, or present in a persuasive manner, was not (and the motion provides no references to the record of the proceeding showing otherwise). In any event, the Court has no duty to sort through the record and try to figure out what a party fails to make clear. *See Mast v. Standard Oil Co.*, 140 Ariz. 1, 2, 680 P.2d 137, 139 (1984); *McWain v. Tucson Gen. Hosp.*, 137 Ariz. 356, 359, 670 P.2d 1180, 1183 (App. 1983). The Court believes that what is set forth in its November 8 order reflects the correct application of the relevant law to the evidence as that evidence was presented.

This Court allowed Petitioner Cori Critzer more time to respond to Respondent’s motion than what the rules normally allow, but she did not. Although what Petitioner filed is titled “Response to Motion Titled Urgent Motion for Clarification,” that Response does not address the issues presented by Respondent’s motion. Instead, that Response is Petitioner’s own motion for a new trial. A motion for new trial must be filed not more than 15 days after the entry of a final, appealable order. Ariz. R. Fam. L. P. 83(D). The Court is not permitted to allow additional time to file such a motion. *E.g. Foster v. Camelback Mgt. Co.*, 132 Ariz. 462, 463, 646 P.2d 893, 894 (1982) (stating that a new trial motion must be filed “not later than 15 days after entry of the judgment” and “[t]his time may not be enlarged”). Here, the deadline to file such a motion was November 24 (15 days after the date of entry of the Court’s decision). Petitioner submitted her filing 40 days after that deadline.

Even if the Court did have the authority to grant Petitioner’s request for a new trial, it could not do so based on her motion. The motion contends:

i. A psychologist should have been, but was not, permitted to testify at the hearing – That witness did not appear on Petitioner’s witness list. [See Petitioner’s List of Witnesses and Exhibits (10/21/11) at 1-2; Petitioner’s Pretrial Statement (10/28/11) at 2] Thus, there is no basis for the contention that this witness should have been allowed to testify.

ii. Petitioner was not given sufficient time to testify – Petitioner was told more than four months before the hearing what she needed to do if she required additional time to present her evidence. [See Minute Entry (6/17/11) at 2] She did not do so. Nor does the motion cite to anything in the record where a request for additional time was made on Petitioner’s behalf. The applicable rules and law do not allow a party to assert this objection for the first time almost two months after the hearing.

iii. The Court erred in its consideration of the evidence – That a party may

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2004-011374

01/09/2012

disagree with a Court's evaluation of evidence is, under no recognized standard, a basis for granting a new trial motion. *See Gutierrez v. Gutierrez*, 193 Ariz. 343, 347-48 ¶ 13, 972 P.2d 676, 680-81 (App. 1999) (stating that it is the function of trial courts to determine "witnesses' credibility and the weight to give to conflicting evidence"); *see also O'Hair v. O'Hair*, 109 Ariz. 236, 240, 508 P.2d 66, 70 (1973) (stating that a trial court's determination regarding conflicting evidence will be upheld as long as "the trial court had before it evidence which might reasonably support its action" (numerous citations omitted)); *Danielson v. Evans*, 201 Ariz. 401, 406 ¶ 13, 36 P.3d 749, 754 (App. 2001) (Pelander, J.) (stating that the factual findings made by trial courts stand unless they are "clearly erroneous"). Moreover, when making its factual determinations, a Court acting in the role of fact finder may accept all, only some, or none of a party's testimony. *See Callender v. Transpacific Hotel Corp.*, 179 Ariz. 557, 562, 880 P.2d 1103, 1108 (App. 1993); *see also Nardella v. Campbell Mach., Inc.*, 525 F.2d 46, 49 (9th Cir. 1975) (quoting *Banks v. Chicago Grain Trimmers*, 390 U.S. 459, 467 (1968)).

The Court has "considerable discretion" to deny a motion for new trial. *Delbridge v. Salt River Project Ag. Improve. & Power Dist.*, 182 Ariz. 46, 53, 893 P.3d 46, 53 (App. 1995). The reasons on which both motions are predicated are insufficient to warrant granting them. *See Ogden v. J.M. Steel Erecting, Inc.*, 201 Ariz. 32, 36, ¶15, 31 P.3d 806, 810 (App. 2002); *Styles v. Ceranski*, 185 Ariz. 448, 450, 916 P.2d 1164, 1166 (App. 1996).

By separate minute entry, the Court is appointing a Parenting Coordinator. If the parties experience difficulties working out issues involving their child, they are first required to take up those issues with the Parenting Coordinator before returning to Court. The Court reminds the parties that, if the Parenting Coordinator reports that one of them has acted unreasonably (which includes an unwillingness to cooperate with the other parent in a reasonable fashion), the Court may require the unreasonable party to pay all fees and expenses incurred in connection with the Parenting Coordinator's efforts to resolve any specific issue presented to her.

IT IS ORDERED denying Respondent's Urgent Motion for Clarification and what amounts to Petitioner's motion for new trial (which was submitted under the title Response to Motion Titled Urgent Motion for Clarification).

IT IS FURTHER ORDERED signing this minute entry as a formal Order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / HONORABLE DOUGLAS GERLACH

JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2004-011374

01/09/2012

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.